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11 TAYLOR THOMSON

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 Taylor Thomson

15 Case No. 2:23-cv-04669-MEMF-MAR

16 Plaintiff,

17 v.
18 **PLAINTIFF TAYLOR THOMSON'S
REPLY MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS DEFENDANT
ASHLEY RICHARDSON'S AMENDED
COUNTERCLAIMS**

Persistence Technologies BVI Pte Ltd., Tushar
Aggarwal, Ashley Richardson,

19 Defendants.

20 The Honorable Maame Ewusi-Mensah
Frimpong, United States District Judge

21 Date: May 30, 2024

22 Time: 10:00 a.m.

23 Courtroom: 8B

1 On December 22, 2023, Defendant Ashley Richardson filed an Answer (ECF No. 48) to
2 Plaintiff Taylor Thomson's First Amended Complaint. That Answer includes vague and conclusory
3 assertions that Ms. Richardson styled as a "Counterclaim" against Ms. Thomson. (ECF No. 48 at
4 13:14-14:8.) Ms. Thomson moved to dismiss Ms. Richardson's counterclaim on January 12, 2024,
5 on the ground that the three-paragraph counterclaim alleges no facts describing any cognizable legal
6 cause of action. (ECF No. 50.) On February 2, 2024, Ms. Richardson filed an Amended
7 Counterclaim (ECF No. 58) (the "Amended Counterclaim") and an untimely opposition to the motion
8 to dismiss the initial counterclaim (ECF No. 55). Given that Ms. Richardson has amended her
9 Counterclaim, it appears that Ms. Thomson's initial Motion to Dismiss and Ms. Richardson's initial
10 opposition is now moot.¹ On February 16, 2024, Ms. Thomson moved to dismiss Ms. Richardson's
11 Amended Counterclaim (ECF No. 61) (the "Motion to Dismiss") which Ms. Richardson opposed
12 (ECF No. 65) (the "Opposition").²

13 For the reasons already identified in Ms. Thomson's Motion to Dismiss, Ms. Richardson's
14 Amended Counterclaim should be dismissed with prejudice. Rather than respond to Ms. Thomson's
15 arguments, Ms. Richardson's Opposition improperly asserts a new theory of liability and restates the
16 vague and conclusory allegations in her Amended Counterclaim.

17 **ARGUMENT**

18 The Court should disregard Ms. Richardson's Opposition because it does not address any
19 argument raised by the Motion to Dismiss.

20 **I. Ms. Richardson Fails to Plead an Actionable Counterclaim**

21 Ms. Richardson's Opposition fails to address any argument raised by the Motion to Dismiss.
22 When a party's opposition brief fails to address an argument raised in an opening brief, this Court
23 has considered the argument to be conceded by the party opposing the motion. *E.g., Focally LLC v.*

25 ¹ See *Precision Toxicology, LLC v. Crone*, 2021 U.S. Dist. LEXIS 17621, *4 (finding plaintiff's motion to dismiss a
26 counterclaim to be moot where defendant filed an amended counterclaim); see also *Ramirez v. Cty. of San Bernardino*,
806 F.3d 1002, 1008 (9th Cir. 2015) ("It is well-established in our circuit that an 'amended complaint supersedes the
original, the latter being treated thereafter as non-existent.'").

27 ² Though the Court's docket reflects that Ms. Richardson's Opposition was filed on March 8, 2024, Ms. Thomson was
28 never served with a copy and, thus, was not aware of the Opposition until the transaction was entered on the docket on
March 12, 2024.

1 *Win Elements, LLC*, 2022 WL 19827474, at *6 (C.D. Cal. Sept. 22, 2022) (finding that defendants
2 conceded an issue by failing to address the argument in their opposition); *Kroeger v. Vertex*
3 *Aerospace LLC*, 2020 WL 3546086, at *8 (C.D. Cal. June 30, 2020). The Motion to Dismiss argues
4 that Ms. Richardson’s Amended Counterclaim is insufficiently pleaded under Federal Rule of Civil
5 Procedure 8 and that any counterclaim by Ms. Richardson for defamation or intentional infliction of
6 emotional distress (“IIED”) should be dismissed with prejudice because these claims, as pleaded,
7 cannot be cured by amendment. (Motion to Dismiss at 4-6.) Ms. Richardson’s Opposition does not
8 even attempt to address these arguments. Indeed, the terms “Rule 8” or “defamation” are not even
9 mentioned in the Opposition.

10 Rather than argue the sufficiency of her counterclaims, Ms. Richardson asserts a whole new
11 theory of liability and restates the vague and conclusory allegations asserted in her Amended
12 Counterclaim. Ms. Richardson, for the first time in this action, raises a claim for slander in her
13 Opposition. (Opposition ¶¶ 3-5.) Whether this is an attempt by Ms. Richardson to argue in support
14 of her original defamation claim or amend (for a second time) her counterclaims, “it is improper for
15 a plaintiff to assert an unpled theory of liability in opposition to a defendant’s Rule 12(b)(6) motion
16 to dismiss.” *Gerritsen v. Warner Bros. Ent. Inc.*, 116 F. Supp. 3d 1104, 1126 (C.D. Cal. 2015).
17 Accordingly, the Court should disregard Ms. Richardson’s new, unpled theory of liability. *See*
18 *Elizabeth L. v. Aetna Life Insurance Co.*, 2014 WL 2621408, at *4 (N.D. Cal. June 12, 2014)
19 (refusing to consider unpled theories of liability raised for the first time in opposition to motion to
20 dismiss).

21 Even if the Court were to consider Ms. Richardson’s slander claim it relies on an abbreviated
22 restatement of the vague and conclusory allegations underlying her defamation counterclaim.
23 (*Compare* Opposition ¶ 5 with Amended Counterclaim ¶¶ 3-11.) Ms. Richardson similarly restates
24 her inadequate allegations in support of her IIED claim. (*Compare* Opposition ¶ 7 with Amended
25 Counterclaim ¶¶ 18-19, 22.) Not only are these allegations demonstrably false, they are insufficient
26 to support her claims. Thus, the Opposition does not address any of the shortcomings of Ms.
27
28

1 Richardson's Amended Counterclaim identified in the Motion to Dismiss, and this Court should
2 consider these arguments as conceded by Ms. Richardson.

3 **CONCLUSION**

4 Accordingly, Ms. Thomson respectfully requests that the Court grant her Motion to Dismiss
5 and dismiss Ms. Richardson's Amended Counterclaim in its entirety with prejudice for failure to
6 state a claim under Rule 12(b)(6).

7 Dated: March 15, 2024

8 **MCDERMOTT WILL & EMERY LLP**

9 By: /s/ Julian André
10 JULIAN ANDRE

11 Attorneys for Plaintiff
12 TAYLOR THOMSON

CERTIFICATE OF COMPLIANCE

This certifies that Plaintiff Taylor Thomson's Reply Memorandum in Support of Motion to Dismiss Defendant Ashley Richardson's Amended Counterclaims complies with the requirements of Local Rule 11-6, as amended by the Honorable Maame Ewusi-Mensah Frimpong's Civil Standing Order of November 2022 (available at <https://www.cacd.uscourts.gov/honorable-maame-ewusi-mensah-frimpong>). The Memorandum contains less than 10 pages and therefore does not include a Table of Authorities and a Table of Contents. The Memorandum uses Times New Roman twelve-point font for body text and ten-point font for footnotes.

Dated: March 15, 2024

/s/ Julian André

Julian André

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in Los Angeles, California. My business address is McDermott Will & Emery, LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067. I am over the age of eighteen years and not a party to this action.

On March 15, 2024, I served unredacted copies of the following document:

**PLAINTIFF TAYLOR THOMSON'S REPLY MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS DEFENDANT ASHLEY RICHARDSON'S AMENDED
COUNTERCLAIMS**

on the following party via Electronic Mail based on the written consent of Ms. Richardson:

Ashley Richardson
25399 Markham Lane
Corral De Tierra, CA 93908
ashrichardson@mac.com

Defendant in Pro Per

on the following parties via the CM/ECF Notice system:

AnnaMarie A. Van Hoesen
AVanHoesen@jenner.com
515 Flower Street, Suite 3300
Los Angeles, CA 90071

*Counsel for Defendants Persistence
Technologies (BVI) PTE. Ltd. and
Tushar Aggarwal*

Kayvan B. Sadeghi
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New York, NY 10036

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on March 15, 2024 in Los Angeles, California.

/s/ Diksha Vadan
Diksha Vadan